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**HOUSE BILL 68**  
**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**  
**INTRODUCED BY**  
**Luciano "Lucky" Varela**

**AN ACT**  
**RELATING TO THE WORKERS' COMPENSATION ADMINISTRATION; REMOVING**  
**THE LIMITATION ON FUTURE EMPLOYMENT OF OMBUDSMEN; INCREASING**  
**THE DIRECTOR'S SALARY; LIMITING SUBSEQUENT TERMS OF WORKERS'**  
**COMPENSATION JUDGES.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 52-5-1.4 NMSA 1978 (being Laws 1990**  
**(2nd S.S.), Chapter 2, Section 64) is amended to read:**

**"52-5-1.4. OMBUDSMAN PROGRAM --**

**A. The director shall establish an ombudsman**  
**program to assist injured or disabled workers, persons claiming**  
**death benefits, employers and other persons in protecting their**  
**rights and obtaining information available under workers'**  
**compensation and occupational disease disablement laws.**

**B. An ombudsman shall meet with or otherwise**

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1 provide information to injured or disabled workers, investigate  
2 complaints and communicate with employers, insurance carriers  
3 and health care providers on behalf of injured or disabled  
4 workers. An ombudsman shall otherwise assist unrepresented  
5 claimants, employers and other parties to enable them to  
6 protect their rights in the workers' compensation and  
7 occupational disease disablement system. At least one  
8 specially qualified employee in each location that the  
9 administration has an office shall be designated by the  
10 director as an ombudsman, and duties described in this section  
11 shall be that person's primary responsibility. The director  
12 may designate additional ombudsmen and assign them as he deems  
13 appropriate.

14 C. An ombudsman need not be an attorney but shall  
15 demonstrate familiarity with workers' compensation and  
16 occupational disease disablement laws. [~~Any person employed as  
17 an ombudsman shall be ineligible to hold any other position in  
18 the administration for at least five years from the date of  
19 leaving the position of ombudsman.~~]

20 D. An ombudsman shall not be an advocate for any  
21 person and shall restrict his activities to providing  
22 information and facilitating communication. An ombudsman shall  
23 not assist a claimant, employer or any other person in any  
24 proceeding beyond the informal conference held pursuant to  
25 Section 52-5-5 NMSA 1978.

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1           E. Each employer shall notify his employees of the  
2 ombudsman service in a manner prescribed by the director.  
3 [~~Such~~] The notice shall include the posting of a notice in one  
4 or more conspicuous places. The director shall also describe  
5 clearly the availability of the ombudsmen on the first report  
6 of accident form required under Section 52-1-58 NMSA 1978, or  
7 the first report of disablement form required under Section  
8 52-3-51 NMSA 1978. "

9           Section 2. Section 52-5-2 NMSA 1978 (being Laws 1986,  
10 Chapter 22, Section 28, as amended) is amended to read:

11           "52-5-2. DIRECTOR-- APPOINTMENT-- EMPLOYEES-- WORKERS'  
12 COMPENSATION JUDGES.--

13           A. The workers' compensation administration shall  
14 be in the charge of a director, who shall be appointed by the  
15 governor for a term of five years with the consent of the  
16 senate. The appointed director shall serve and have the  
17 authority of that office during the period of time prior to  
18 final action by the senate confirming or rejecting the  
19 appointment. The appointment shall be made on the basis of  
20 administrative ability, education, training and experience  
21 relevant to the duties of the director. Upon the expiration of  
22 the term, the director shall continue to serve until the  
23 successor is appointed and qualified. Before entering upon the  
24 duties, the director shall subscribe to an oath to faithfully  
25 discharge the duties of the office. The director shall devote

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1 full time to the duties of the office. The director's salary  
2 shall be equal to ninety-five percent of that of [~~district~~  
3 court of appeals judges.

4 B. The director shall appoint necessary workers'  
5 compensation judges. Workers' compensation judges shall not be  
6 subject to the provisions of the Personnel Act except as  
7 provided by Subsection C of this section. Workers'  
8 compensation judges shall be appointed for an initial term of  
9 one year and shall be compensated at a rate equal to ninety  
10 percent of that of district court judges. Ninety days prior to  
11 the expiration of a workers' compensation judge's term, the  
12 director shall review his performance. If approved by the  
13 director, the workers' compensation judge may be reappointed to  
14 a subsequent [~~five-year~~] two-year term.

15 C. Workers' compensation judges shall be lawyers  
16 licensed to practice law in this state and shall have a minimum  
17 five years' experience as a practicing lawyer. They shall  
18 devote their entire time to their duties and shall not engage  
19 in the private practice of law and shall not hold any other  
20 position of trust or profit or engage in any occupation or  
21 business interfering with or inconsistent with the discharge of  
22 their duties as workers' compensation judges. A workers'  
23 compensation judge shall be required to conform to all canons  
24 of the code of judicial conduct as adopted by the supreme  
25 court, except canon 21-900 of that code. Violation of those

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1 canons shall be exclusive grounds for dismissal prior to the  
2 expiration of his term. Any complaints against a workers'  
3 compensation judge shall be filed with the state personnel  
4 board, which shall report its findings to the director.

5 D. Workers' compensation judges shall have the same  
6 immunity from liability for their adjudicatory actions as  
7 district court judges. "

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